STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 8, 2013
v	No. 311587 Ingham Circuit Court
JOHN ELLIS JONES, JR., Defendant-Appellant.	LC No. 11-001044-FH

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a jury trial, of one count of breaking and entering a building with intent to commit a felony, MCL 750.110, and one count of resisting and obstructing a police officer causing injury, MCL 750.81(d)(2). Defendant was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of 85 to 240 months for the breaking-and-entering conviction and 36 to 96 months for the resisting-and-obstructing conviction. We affirm.

This prosecution stems from the theft of lottery tickets valued in excess of $4,000 from a Lansing convenience store. Defendant was found in possession of some of the lottery tickets taken from the store as he walked along a Lansing street. A store surveillance system recorded the break-in, and the recording was admitted into evidence and played for the jury.

I. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence adduced for a jury to find him guilty of breaking and entering. When considering a challenge to the sufficiency of the evidence in a criminal case, this Court "reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (internal quotation marks and citation omitted). Further, the prosecutor "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility; it need only convince the jury in the face of whatever contradictory

evidence the defendant may provide." *Nowak*, 462 Mich at 400 (internal quotation marks and citation omitted).

The elements of breaking and entering are: (1) breaking into a building, (2) entering the building, and (3) intending to commit a felony in the building at the time of the breaking and entering. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). Defendant does not contest that the party store was broken into and entered, or that the perpetrator did so with the intent to commit a felony. Rather, defendant contends that there was insufficient evidence to prove beyond a reasonable doubt that he was the perpetrator. We disagree.

The store's video surveillance footage captured the perpetrator smashing and kicking in the front door, entering the store, and stealing the lottery tickets. The perpetrator was wearing a dark hat with a light logo, a hooded sweatshirt, dark jeans with a distinctive design on the back right pocket, and dark shoes with a white stripe. The clothes defendant was wearing when arrested consisted of a dark hat with a lighter logo, a hooded sweatshirt, and dark jeans with a design on the pocket. The jury was also able to compare defendant's physical characteristics with those of the perpetrator shown on the surveillance footage. Further, defendant was found in possession of some of the recently stolen lottery tickets approximately one-and-a-half miles from the store about 45 minutes after the store was broken into. "It is well established that the jury may infer that the possessor of recently stolen property was the thief." *People v Haden*, 132 Mich App 273, 282 n 4; 348 NW2d 672 (1984). Further, when approached by a police officer driving a fully marked police vehicle and wearing a full police uniform, defendant disregarded the officer's orders and took off running. The jury could conclude that defendant knowingly ran from and assaulted a police officer, which in turn supports the reasonable inference that defendant possessed a consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Finally, according to one of the officers who arrested defendant, when apprehended defendant professed, "I did this because I have got a son to take care of." Viewed in its entirety and in a light most favorable to plaintiff, this evidence is sufficient to establish defendant's identity as the perpetrator.

II. EXCUSAL OF JUROR FOR CAUSE

Next, defendant challenges the trial court's decision to excuse a juror for cause. During the jury selection process, a potential juror stated that he "might have a problem with an all white jury" or "[m]ajority white jury," given that "it's a black Defendant." The trial court informed the parties that it was greatly concerned by the juror's statement and stated its opinion that the juror should be excused for cause. The trial court then asked counsel for each party if they had any objection, and both responded "[n]o objection." To preserve a challenge to a trial court excusing a juror for cause, a party must object to the dismissal below. *People v Eccles*, 260 Mich App 379, 381-382; 677 NW2d 76 (2004) (noting that the defendant failed to preserve its challenge to excusing jurors for cause where the defendant did not object to the trial court's application of MCR 2.511(D)(11)). As defendant did not object below, and affirmatively stated that he had no

objection, this issue has been waived. *People v Carter*, 462 Mich 206, 215, 219; 612 NW2d 144 (2000).[1]

In any event, MCR 2.511(D)(3)-(4) provide that a juror may be challenged for cause where the juror "shows a state of mind that will prevent the person from rendering a just verdict" or "has opinions . . . that would improperly influence the person's verdict." The exclusion of the juror in issue was permissible under either MCR 2.511(D)(3) or (D)(4).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra

[1] Also, by failing to properly argue the merits of any constitutional issue, although identified as such in his statement of questions presented, defendant has abandoned any claim of constitutional error. See, e.g., *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.").